IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

WP(C).No. 19689 of 2007(R)

PETITIONERS:

1. **M/S. KANNAN DEVAN HILLS PLANTATIONS CO. PVT. LTD., KDHP HOUSE, MUNNAR-685 612, REPRESENTED BY ITS ASSISTANT MANAGER - MR.C.SREEKUMAR.**

2. **M/S. TATA TEA LIMITED, SPECIAL PROJECTS OFFICE, GENERAL HOSPITAL COMPLEX, MUNNAR-685 612, REPRESENTED BY ITS MANAGER - ADMINISTRATION, MR. PRATAP RAMDAS.**

BY ADV. SRI.SOLI J.SORABJEE (Sr.)
SRI.JOSEPH VELLAPPALLY (Sr.)
SRI.JOSEPH MARKOSE
SRI.JOSEPH KODIANTHARA
SRI.MATHEWS K.UTHUPPACHAN

RESPONDENTS:

1. **STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVT. SECRETARIAT, THIRUVANANTHAPURAM.**

2. **MR. BINOY VISWAM, THE HON'BLE MINISTER OF FORESTS, MINISTRY OF FORESTS, SECRETARIAT, TRIVANDRUM.**

3. **THE DISTRICT COLLECTOR, IDUKKI.**

.2/-

4. THE SUB COLLECTOR,
   DEVICOLAM.

5. THE TAHSILDAR,
   DEVICOLAM.

6. THE VILLAGE OFFICER,
   K.D.H. VILLAGE.

7. MR. K.SURESH KUMAR, IAS,
   ADDITIONAL SECRETARY TO GOVERNMENT,
   CHAIRMAN, SPECIAL TASK FORCE, MUNNAR,
   IDUKKI DISTRICT.

8. THE CONSERVATOR OF FORESTS (PROTECTION),
   TRIVANDRUM.

9. THE ASST. CONSERVATOR OF FORESTS
   HOLDING FULL ADDITIONAL CHARGE OF DIVISIONAL
   FOREST OFFICER, MUNNAR DIVISION, DEVICOLAM,
   IDUKKI DISTRICT.

BY SRI.VENGANNOOR N.CHANDRASEKHARAN NAIR,
ADDL.ADVOCATE GENERAL
BY SR.GOVERNMENT PLEADER SRI. K.J.MOHAMMED ANSAR
GOVERNMENT PLEADER SRI. P.K.BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF NOTICE DTD. 14/06/2007 ISSUED BY THE 9TH RESPONDENT TO THE 2ND PETITIONER.

EXT.P1(A); COPY OF THE PAPER REPORTS IN DATEWISE.

EXT.P2: COPY OF THE 1ST POONJAR CONCESSION DTD. 27/05/1878.

EXT.P2(A): COPY OF DEED DTD. 26/07/1879 BETWEEN POONJAR CHIEF AND JOHN DANIEL MUNRO.

EXT.P3: COPY OF THE DEED OF RATIFICATION DTD. 28/11/878 EXECUTED BY THE GOVERNMENT OF TRAVANCORE.

EXT.P4: COPY OF THE DEED DTD. 2/08/1886 EXECUTED BETWEEN THE GOVERNMENT AND NORTH TRAVANCORE LAND PLANTING AND AGRICULTURAL SOCIETY LIMITED.

EXT.P4(A): COPY OF ORDER DTD. 29/03/1974 OF THE LAND BOARD IN RESPECT OF KDHPCO.

EXT.P4(B): COPY OF ORFDER DTD. 29/03/1974 OF THE LAND BOARD IN RESPECT OF DEVICOLAM ESTATE.

EXT.P4(C): COPY OF THE FINAL PROCEEDINGS OF THE DISTRICT COLLECTOR DTD. 13/10/1977 AND OF THE TAHSILDAR, DEVICOLAM DTD. 12/06/1978.

EXT.P5: COPY OF GOVERNMENT'S ORDER DTD. 17/05/1996.

EXT.P6: COPY OF JUDGMENT AND ORDER DTD. 31/10/2002 OF THIS HON'BLE COURT IN WP(C) NO.32055/2002.

EXT.P7: COPY OF THE JUDGMENT DTD. 20/09/2006 IN O.P.NO.29673/2001 OF THIS HON'BLE COURT.

EXT.P8: COPY OF THE STATEMENT DTD. 6/06/2006 FILED FOR THE ADDL. CHIEF SECRETARY TO GOVERNMENT.

EXT.P9: COPY OF LETTER DTD. 28/02/07 ISSUED BY THE PRINCIPAL SECRETARY TO GOVERNMENT.

..2/-

EXT.P10: COPY OF THE GOVERNMENT ORDER DTD. 30/11/2006.

EXT.P11: COPY OF THE LETTER DTD. 8/12/2006 ISSUED BY PETITIONERS TO GOVERNMENT.

EXT.P12: COPY OF THE LETTER DTD. 8/03/2007 ISSUED BY PETITIONERS TO GOVERNMENT.

EXT.P13: COPY OF THE NOTICE DTD. 28/05/2007 ISSUED BY THE ASSISTANT EXECUTIVE ENGINEER, NATIONAL HIGHWAY SUB-DIVISION NO.III, DEVICOLAM.

EXT.P14: COPY OF THE REPLY DTD. 29/05/2007 FILED BY THE 2ND PETITIONER.

EXT.P14(A): COPY OF THE ORDER DTD. 29/05/2007 ISSUED BY THE ASSISTANT EXECUTIVE ENGINEER.

EXT.P15: COPY OF THE REPLY DTD. 25/06/2007 FILED BY THE PETITIONERS.

EXT.P16: COPY OF THE JUDGMENT DTD. 10/07/1997 IN O.P.NO.2173/1997 OF THIS HON'BLE COURT.

EXT.P17: COPY OF THE ORDER OF THE LAND BOARD DTD. 7/10/1997.

EXT.P18: COPY OF THE STATEMENT FILED BY THE PETITIONER DTD. 21/05/1996 (EXHIBIT P21 IN O.P.NO.2173/1997)

EXT.P18: LETTER DTD. 5/07/2005 SENT BY THE MANAGER OF THE PETITIONER ALONG WITH STATEMENT OF THE MANAGER OF THE ESTATE.

EXT.P19: LETTER DTD. 14/10/2006 ADDRESSED TO DFO BY MR.GUHA THAKURTA.

EXT.P20: AFFIDAVIT DTD. 20/03/1999 FILED BY THE DISTRICT COLLECTOR IN O.P.NO.18828 OF 1998.

9TH RESPONDENT'S EXHIBITS:

EXT.R9(1): **A MAP SHOWING THE SHOLA FOREST AREA IN KDH VILLAGE.**

EXT.R9(2): **THE LIST OF OFFENCES REGISTERED AGAINST THE PETITIONER COMPANY.**

EXT.R9(3): **COPY OF THE ORDER OF THE HON'BLE SUPREME COURT IN WP(C) NO.202/95 DTD. 12/12/1996.**

EXT.R9(4): **COPY OF THE DRAFT MANAGEMENT PLAN.**

EXT.R9(5): **COPY OF THE OFFICE MEMO DTD. 02/09.1998 OF THE M/S. TATA TEA LTD.**

/TRUE COPY/

P.S.TO JUDGE

KSS

K. M. JOSEPH, J.

W.P.C. NO. 19689 OF 2007 R

Dated this the 12th July, 2007

JUDGMENT

The petitioners have approached this Court seeking the following reliefs:

> *"(i) Issue a writ of mandamus forbearing the respondents from taking any action for dispossession, destruction or demolition of any land, crops or buildings in the possession of the petitioner3s or a writ of prohibition restraining the respondents or any other Officer acting under them from initiating any action with respect to the lands in possession of the petitioners covered by Exts.P4 and P4(b) orders of the Land Board which have been passed under the KDH Act of 1971.*
>
> *(ii) Call for the records relating to Ext.P1 notice and quash the same by issue of a writ of certiorari or such other appropriate writ, direction or order.*

(iii) In the alternative, to direct the respondents and all other Officers/subordinates that no action be taken with respect to the lands held by t3he petitioners covered by Exts.P4e and P4(b) orders of the Land Board which have been passed under the KDH Act of 1971 until proper notice is served, adequate time and opportunity is provided for reply and further adequate time is given after service of orders passed pursuant thereto to the petitioners to impugn such orders, if necessary."

2. Briefly put, the case of the petitioners is as follows:

They trace their right to the First Poonjar Grant in favour of one JD Munro, which document came to be ratified by Deed of Ratification dated 28.11.1879, the Second Poonjar Grant of 26.7.1879, Ext.P4 Deed of Modification of Taxes dated 2.8.1886, Agreement dated 18.9.1899 between the Government of Travancore and Poonjar Raja, Royal Proclamation dated 24.9.1899. It is their case that under the Kannan Devan Hills Resumption of Lands Act, 1971 passed by the Kerala State

Legislature, by Exts.P4(a) and P4(b) orders, the Land Board allowed the predecessors in interest of the petitioners to retain a total of 58741.82 Acres. Of course, this includes the area which did not vest under the Act being Plantations and Buildings. They have approached this Court apparently against Ext.P1 Notice. By Ext.P1 Notice, the Assistant Conservator of Forests has called upon the second petitioner to furnish to him the exact area in which they have planted excess fuel plantations over and above the 16,898.91 acres and also the correct extent of land converted by it to tea plantations from the above said 16,898.91 acres, within fifteen days failing which, it is stated that the Department will be initiating appropriate preventive and departmental steps including penal action, in order to ensure that its activity is confined to the respective areas which were leased out to it by the Land Board as per the Land Board's Order dated 29.3.1974. Of course, the petitioners have referred to certain statements made by the second respondent and one of the contentions they have raised is that the notice was issued at the

instance of the second respondent. It is their further case that change in land use, is a matter which, in fact, engaged the attention of the Land Board, even in the original Order (Ext.P4 (a)). In Ext.P4 (a), it is, inter alia, stated as follows:

> *"It may be seen that the totals of the seven categories specified in the two statements agree, changes have been made only in between categories. The areas under Tea, Grazing and uncultivable land have been reduced. The areas under the other five categories have been increased. This has been done in the course of the business of the Company, according to the requir3ement4s. It is unavoidable especially in cases where, between the original vesting and the consequent adjustment as in this case, there has been considerable passage of time."*

3. It is their case that this issue of conversion of land use had arisen earlier and the matter was brought to this Court by the second petitioner by a Writ Petition culminating in Ext.P16

Judgment. Pursuant to Ext.P16 Judgment, the Land Board has passed Ext.P17 Order dated 7.10.1997 as per which the controversy has been set at rest, it is stated. Ext.P17 in so far as it is material, is produced hereunder:

> *"There is no definite provision in the Act governing the issue of change of use of the land. However, a determination of the status has been made by the Land Board under Section 4(3) and that order is final. But, Section 4(5) permits the retention of the existing rights over the restored area. Under the existing law there is no specific provision permitting the Company to change the use of land; there is also no provision preventing the Company from doing it. In the absence of the latter, the Company claims the right under Section 4(5). The right under Section 4(5) being in respect of lands put in possession under Section 4(4), it cannot be seen as an independent right, and has to be read with the Land Board's order under Section 4(3). In the absence of a specific provision in the law, the Land Board does not want to interfere in the change of use of land for business purposes,*

> *provided public interest is not affected. However, since the restoration is based on specific orders of the Land Board, the Board should be kept informed about changes if any in the utilisation of the land. Such information may be furnished to the Revenue Divisional Officer, Devikulam who is hereby authorised to receive it on behalf of the Land Board."*

It is the case of the petitioners that the impugned notice is without jurisdiction and unauthorised. It is contended by Shri Soli J. Sorabjee, learned senior counsel appearing on behalf of the petitioners, that there is, in fact, no statutory prohibition against conversion of land use. At any rate, the matter cannot be re-agitated in the teeth of Ext.P17 order, he contends. Ext.P1 notice is issued under a legal misconception, it is contended. There is total non-application of mind, he points out. He would, in fact, submit that the petitioners have not trespassed upon any land vested with the Government and they are in possession of only the area admeasuring 58741.82 acres covered by Exts.P4

(a) and P4(b) orders. All that has happened is that there has been a change in the land use and this is not impermissible, it is contended, and as long as the matter stands concluded by Ext.P17, it is contended that there is no basis at all to issue Ext.P1 notice. Learned senior counsel also took me through the notice and drew my attention to the phraseology of the notice, to point out that the author of the notice has already made up his mind. He would in particular point out that in Ext.P1 notice it is, inter alia, stated as follows:

> *"On further enquiry, we are convinced that you have trespassed into large extent of land covered by natural forests, which are not leased out to you and also converted, land given to you for fuel plantation into tea plantations."*

Of course, they have submitted Ext.P15 reply. But, it is contended that in the light of the phraseology in Ext.P1 and the surrounding circumstances and the back-drop of the case, allowing the 9th respondent to proceed with the notice would be

an exercise in futility, as he has already pre-determined the issues. Learned senior counsel would also point out that when a notice is issued without jurisdiction, as in the facts of this case, this Court should not stay its hands and he relies in this regard on the decisions of the Apex Court in Calcutta Discount Co. Ltd. v. Income-tax Officer, Companies District I, Calcutta & Another (AIR 1961 SC 372), M/s. East India Commercial Co. Ltd., Calcutta and Another v. Collector of Customs, Calcutta (AIR 1962 SC 1893), Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others (AIR 1999 SC 22). He would also point out that as recently as in the year 2006, a Statement has been filed on behalf of the Additional Chief Secretary (Ext.P8) which would unambiguously indicate that far from the petitioners having trespassed, they are actually in possession of less land that they are entitled to, the shortage being in an extent of 278.23 hectares. It is pointed out that the Statement would reveal that the allegation made of trespass is baseless. Still further, reliance was placed on Ext.P20 which is the Counter

Affidavit filed by the District Collector, Idukki. He would rely on the following passage thereunder:

> *"An extent of 70450.61 Acres of land was taken over from the Company under the orders of the State Land Board dated 29.3.1974."*

It is also stated by the District Collector in Ext.P20 Affidavit that "the allegation that land handed over to the Forest Department has been encroached upon is incorrect and is denied. It is submitted that as per pattern of utilisation fixed by the expert committee in respect of the land taken over from the Kannan Devan Produce Company, an extent of 43752.80 acres of land has been left as it was."

4. It is further pointed out by the senior counsel that the petitioners had approached this Court earlier praying for relief of giving the Survey Report. It is pointed out that this Court had directed the State to make available Survey Reports and the direction has been observed in its breach.

5. Shri Vengannoor N. Chandrasekharan Nair, learned

Additional Advocate General, on the other hand, would submit that the Writ Petition is not maintainable. He would submit that what is challenged is a notice and going by the terms of the notice, all that is required of the second petitioner is to make available certain details. He referred me to Sections 2, 3(A) and 3(B) of the Forest (Conservancy) Act. He would submit that the purport of the notice is not to take over any area in the legal possession of the petitioners and covered by the Orders, Exts.P4 (a) and P4(b) which, it is pointed by learned senior counsel appearing for the petitioners, comes to 58741.82 acres. In the Counter Affidavit filed on behalf of the State, it is pointed out that offences have been booked against the petitioners. It is pointed out in the Counter Affidavit that the petitioners have been habitually violating the provisions of the Act and Rules under which the Grant was made. He would submit that under Rule 9 of the Forest (Conservancy) Rules, it is open to the Authorised Officer to proceed against the petitioners, of course after issuing notice contemplated under the proviso. He fairly

concedes that Ext.P1 is not the notice contemplated under the proviso to Rule 9. But, he would contend that this is only a preliminary notice, a notice issued to collect details and facts. He would submit that the respondents intend to proceed against the petitioners for the trespass which they have committed on Government land. It is the definite case of the Additional Advocate General that having regard to the topography of the area, it is clear that the petitioners have trespassed upon the Government land vested under it under the 1971 Act. He would submit that the whole purport of the exercise is to get at the said land trespassed upon by the petitioners and it is not the intention of the respondents to dispossess the petitioners from the land of which they are in legal possession under Exts.P4(a) and P4(b). He would further submit that having regard to Ext.P17 order, it may not be open to the State to contend that the conversion of land use is tabooed in law. Of course, he would immediately point out that there cannot be any cutting or removal of trees contrary to the terms of the agreements or any provision of law.

6. In view of the stand taken by the learned Additional Advocate General before me, I do not think it necessary for me to quash Ext.P1 notice. This is for the reason that the stand of the Additional Advocate General as referred to by me earlier in this Judgment, is that the conversion of land use is permissible within 58741.82 acres of land in the light of Ext.P17, of course, subject to Section 4(5) of the Forest (Conservation) Act, 1971. Also the learned Additional Advocate General has taken the definite stand that the respondents do not intend to proceed against the petitioners in respect of the lands in their legal possession covered by Exts.P4(a) and P4(b). However, I make it clear that it is certainly open to the respondents to take action against the petitioners to get at any land if it is found to have been trespassed upon by the petitioners. It can be done, it goes without saying, strictly in accordance with law. I record the submission of the learned senior counsel for the petitioners that the petitioners are only in possession of the lands covered by Exts.P4(a) and P4(b) and that they have not trespassed upon any

Government land. I further make it clear that I have not pronounced on the contention of the learned Additional Advocate General based on the Forest (Conservation) Act, 1980. As I have already noted, even according to the Additional Advocate General, Ext.P1 notice is not a notice issued under the Proviso to Rule 9 of the Forest (Conservation) Rules, 2003. The Writ Petition is disposed of recording the submissions of the learned Additional Advocate General as stated above and also with the observations which I have made.

K. M. JOSEPH, JUDGE

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